

ADDITIONAL JUDGE IN THE JUDICIAL DISTRICT OF
KANSAS.

JUNE 23, 1898.—Ordered to be printed.

Mr. CLARK, from the Committee on the Judiciary, submitted the
following

REPORT.

[To accompany S. 4786.]

The Committee on the Judiciary, to whom was referred the bill (S. 4786) to provide for the appointment of an additional judge in and for the judicial district of Kansas, have considered the same and beg leave to submit the following report:

The State of Kansas is 400 miles long and 200 miles wide, has 105 organized counties, and in population exceeds 1,600,000. Terms of the district and circuit courts are now held at Leavenworth, on the Missouri River; at Topeka, 57 miles from the east line of the State; at Fort Scott, in the eastern part of the State, and at Wichita, in the south-central part of the State.

It has been shown to the committee that existing business in the courts of the district is very large in volume and important in character, and that it requires the greatest physical and mental vigor for one judge to transact this business with the expedition which is the right of persons accused of crime and of those engaged in litigation.

The health of the present district judge, Hon. Cassius G. Foster, became greatly impaired some seven years since and to such an extent that he is now unable to properly transact the business. As evidence of such fact hereto is attached a letter from said judge, marked "Exhibit A," and made a part of this report.

It has therefore become necessary for the Attorney-General to assign judges from remote districts, at various times, to the holding of court in said district, but such practice is unsatisfactory and causes much delay and additional expense in fees of jurors and witnesses and in the payment of the expenses of the visiting judges. For several years this last item alone has amounted to as much as the salary of a new judge, and on many occasions jurors have been summoned and witnesses subpoenaed to terms of court and then dismissed and paid off without transacting any of the business ready for trial. This of course has compelled the court officers and attorneys to again prepare the

same cases for trial, and has quite largely increased the court expenses in the district. In many instances the trials of cases have been postponed for years, and the present condition of affairs has continued so long that a speedy remedy is demanded.

Naturally enough an assigned judge, away from home, has only a limited time to devote to the business of the district, and he feels that his first duty is to his own district; hence he gives to Kansas only his unoccupied time, and quite frequently it occurs that such judge can not remain long enough to dispose of the business which would otherwise have been ripe for trial, and therefrom the Government and private litigants have suffered such delays as to afford ample basis for the repeated and unanimous appeals which have been made to Congress for relief. This matter has from time to time been submitted to the Department of Justice and relief requested. The late Attorney-General, Hon. Joseph McKenna, in a letter of date January 12, 1898, which is hereto attached and made a part of this report, marked Exhibit B, shows that the relief now requested is proper.

In addition to the facts heretofore presented to the committee with reference to the health of the present judge and to the increasing business in said district, it now appears that the judge is confined to his home and has been unable to preside and transact business for a year past. He has lost hope of being able to recover his health and is extremely anxious and desirous of being retired, but on account of his long service and his financial condition he does not feel that he ought to resign.

In view of all the facts there is an urgent necessity for relief. Your committee, however, is of the opinion that it is better that a retirement bill be passed in this case in behalf of said judge than that an additional judge should be appointed for said district as provided for in the bill.

Your committee therefore recommend that the bill be amended by striking out all thereof after line 2 and substituting the following:

That Cassius G. Foster, United States judge for the district of Kansas, may, at his option, resign as such district judge at any time after the first day of September, anno Domini eighteen hundred and ninety-eight, and thereupon he shall receive the same salary during the remainder of his natural life as he is now receiving, and in the same manner as if he had reached the age of seventy years at the time of his resignation, as provided by section seven hundred and fourteen of the Revised Statutes of the United States.

Also amend title of the bill so as to read: "For the relief of Cassius G. Foster."

And as thus amended, we recommend its passage.

EXHIBIT A.

MY DEAR SENATOR: In the matter of the bill for the division of this judicial district, my views having been requested by prominent citizens, I feel constrained to say this: It will be twenty-four years next March since I was appointed to the bench; the salary for about seventeen years of that time was \$3,500 per annum, the judge paying all his own expenses in attending court at the various places in the district; afterwards the salary was increased to \$5,000 per annum, but no allowance was made for expenses. About seven years ago my health broke down completely, and for a long time the physicians believed I could not recover, but I got better, and have for the past year resumed my duties on the bench, but am far from being a well man. At my time of life (60 years of age) and from the nature of my troubles I can not expect to ever fully recover. At times, especially while holding court here at home, I feel reasonably well; but when holding court at other places, with the

change of diet and such accommodations as can be had, my old trouble of the kidneys recurs to a greater or less extent and I am forcibly admonished that I must save myself or break down again. I have seriously thought of resigning, but my brother judges and friends generally protest against it, saying I have broken myself down in the service of the Government, and in my advancing years it would be unjust to myself and to my family to do so. Now, this is frankly the situation. I am willing and anxious to do all my health will permit, and I can do no more. The work in this district is large, and if a bankruptcy law is passed it will be still greater. I feel that the district should be divided or the bill passed allowing me to retire on my salary.

You are at liberty to make such use of this letter as you see proper.

Sincerely yours,

CASSIUS G. FOSTER.

Hon. LUCIEN BAKER,
United States Senator, Washington, D. C.

EXHIBIT B.

MY DEAR SENATOR: The bill creating a new judicial district in Kansas was not referred to me by the Judiciary Committee of the House. Certain data in regard to the business of the courts were only left with me for consideration. From these it appears that the calendars are crowded, and it seems either that a new district should be created or a bill passed allowing Judge Foster to retire on his salary. In his letter of December 2, 1897, Judge Foster frankly states the condition of his health and his inability to perform the service demanded by the business of the district. This condition should be relieved in some way.

The creation of a new district seems to be the better way. Judge Foster is still capable of some work. Besides, the statistics of cases commenced and the amounts of judgments obtained are greater in Kansas than in some other States which have two judicial districts. This is shown by the reports of the Attorney-General. In support of Judge Foster's retirement his letter may be quoted.

Very truly, yours,

JOSEPH MCKENNA,
Attorney-General.

Hon. LUCIEN BAKER,
United States Senate.

